



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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GL-107643-98
GL-108182-98

MEMORANDUM FOR NATIONAL DIRECTOR
SUBMISSIONS PROCESSING T:FS:S

FROM: Lawrence H. Schattner
Chief, Branch 3
(General Litigation) CC:EL:GL:Br3

SUBJECT: Summary Record of Assessment

This responds to your memoranda dated September 22, 1997, March 23, 1998, and March 27, 1998. You asked for written advice on various but relatively rare circumstances under which a Summary Record of Assessment (SRA, in your request a RACS 006 weekly SRA) is not signed on the Monday assessment date. 1/

ISSUES

- (1) If the assessment officer fails to sign the certificate on the SRA on the Monday assessment date so that the date of signing is different than the Monday assessment date of the SRA, is the assessment valid?
- (2) If the Monday assessment date and the signing date do not coincide, which of those dates is the assessment date?

1/ While most assessments are made on a computer generated SRA referred to as RACS 006, a preprinted SRA, Form 23C, is still occasionally used. Generally, our comments relate to both types of SRAs but specifically our comments are made in a factual context concerning a RACS 006. Visually, the difference is that the Form 23C presents everything on one page while the RACS 006 makes the presentation on three pages. The assessment date, found in the upper right-hand corner of Form 23C and in the upper right-hand corner of page 1 of the RACS 006, appears to be referred to as the "record date" but to avoid confusion we will refer to it as the Monday assessment date. The assessment officer's certification, signature and signing date, found at the bottom left of Form 23C, are on page 2 of RACS 006. A listing of supporting documents (such as recaps), found in the lower right-hand corner of Form 23C, are on the third page of RACS 006.

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(3) If the actual date the assessment officer signs the certificate on the SRA is the assessment date, and if that date is different from the Monday date, should the Service change the recaps and the tax accounts to the actual date the assessment officer signed the certificate on the SRA?

(4) If there is an emergency shutdown of a service center (due to inclement weather, a bomb threat, or other unexpected disaster) and the assessment officer signs the certificate on the SRA on the next business day on which the service center is open and shows the date of signing as that next business day, but some of the assessments included in the SRA have assessment periods for which the last day for making an assessment is the Monday assessment date, are the assessments timely?

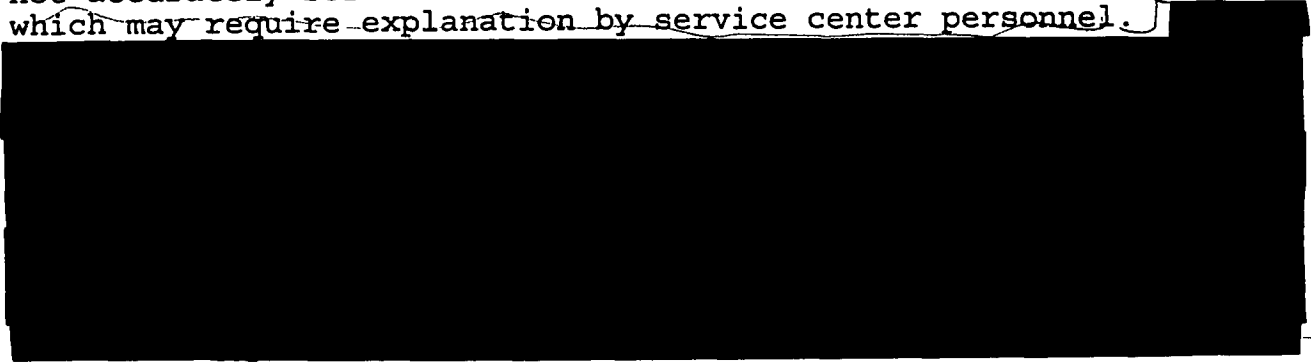
(5) If the Monday assessment date falls on a legal holiday and the SRA is signed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, is the assessment timely and should the date the assessment officer places next to his signature as the date of signing the certificate reflect the Monday assessment date or the actual date of signing the certificate?

CONCLUSIONS


(1) It is the signing of the SRA by the assessment officer that makes the assessment. An SRA showing a Monday assessment date can be signed on a date other than the Monday date. The assessment is valid even though the Monday date on the SRA no longer reflects the assessment date.

(2) The assessment date is the date the assessment officer signs the certificate on the SRA.

(3) It would be beneficial as a matter of proof in a court proceeding challenging the assessment to have the assessment date shown on the SRA, on the recap and on the tax accounts reflect the correct assessment date. A Monday assessment date which does not accurately reflect the assessment date creates a discrepancy which may require explanation by service center personnel.



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(4) The assessments are not timely when made on the next business day after an emergency shutdown of a service center.

(5) The actual date that the assessment officer signs the certificate on the SRA must be shown next to the assessment officer's signature. The assessment is timely when it is made on the next succeeding day that is not a Saturday, Sunday or a legal holiday under I.R.C. § 7503.

DISCUSSION

The practicalities of a service center processing over 100,000 assessments for each one-week period during much of the year, and procedures, require that the weekly assessments be processed to a predetermined assessment date. An SRA is prepared for a Monday assessment date, which is shown in the upper right-hand corner of the SRA. The Monday assessment date is prerecorded on each tax account included in the SRA before the SRA is signed. An assessment officer signs on page 2 of the RACS 006 under a certification statement, and handwrites the date of signing to the right of the signature. Normally, the date of signing the SRA coincides with the Monday assessment date. The issues concern relatively rare circumstances in which the SRA is signed by the assessment officer on a date subsequent to the Monday assessment date reflected on the SRA.

Assessments are "made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary." I.R.C. § 6203. The legislative history states the purpose of that section as:

This section is a substantial clarification of existing law. It provides that the assessments shall be made by recording the liability of the taxpayer in accordance with rules or regulations of the Secretary. This will permit recording of liability, and hence assessment, through machine operations or through any other modern procedure.

H. Rep. No. 1337, 83d Cong., 2d Sess., 1954 U.S. Code Cong. & Adm. News 4552; S. Rep. No. 6122, 83d Cong., 2d Sess., 1954 U.S. Code Cong. & Adm. News 5220.

To carry out the provisions and purpose of section 6203, Treas. Reg. § 301.6203-1 provides:

The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. ... The date of the assessment is the date the summary record is signed by an assessment officer.

The leading case regarding the signing of a SRA is Brafman v. United States, 384 F.2d 863 (5th Cir. 1967), in which the Fifth Circuit, at pages 866-867, said:

We find section 301.6203-1 ... reasonably adapted to carry out the intent of Congress as reflected in § 6203

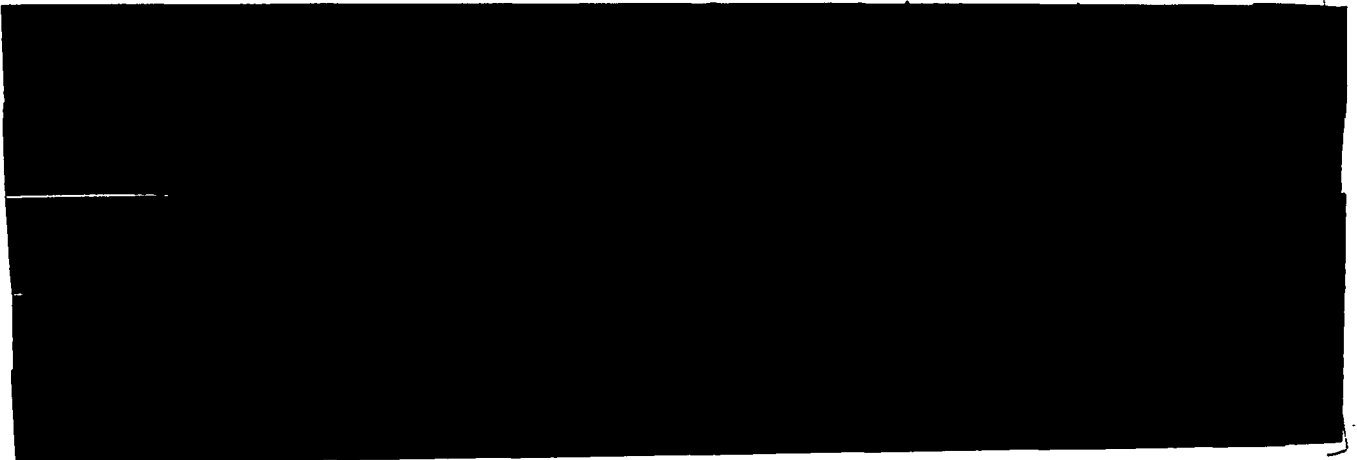
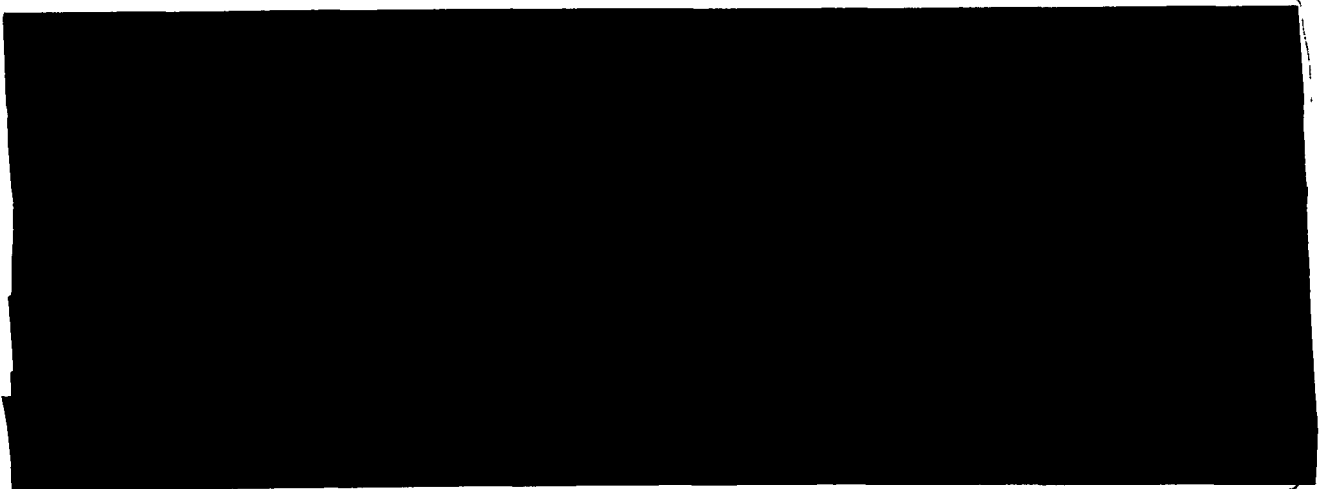
[T]he requirement of the ... [r]egulation -- that an assessment officer sign the assessment certificate -- is consistent with the literally mechanical procedures for recording of liability. The recordation is to be accomplished through "machine operations", but the actual and final assessment step, that step which establishes a prima facie case of taxpayer liability, can be taken only with the approval of a responsible officer of the Internal Revenue Service. ... What is important in any case is that assessment is not automatic upon recordation; it requires the action of an assessment officer. That action, as defined explicitly in the ... [r]egulations, is the signing of the certificate. [Footnotes omitted]

We emphasize that Brafman involved a circumstance in which the proposed certification date (signing date) was not the same as the Monday assessment date. See Brafman, 384 F.2d at 865-867 and fn. 12. The unsigned certificate showed a Monday assessment date of July 23, 1956 and a proposed certification date of Wednesday, August 1, 1956. Id. The Fifth Circuit even indicated that an

assessment officer may have a valid reason to delay signing until some date after the Monday assessment date. Brafman, 384 F.2d at 867.

(1) The first issue concerns the validity of an assessment where the assessment officer signs the certificate on the SRA after the assessment date. In our view, the discrepancy does not affect the validity of the assessment as the decision in Brafman indicates.

(2) The second issue concerns whether the Monday date or the signing date is the assessment date. In view of the above quoted Treasury Regulations and the Brafman decision, we conclude that the assessment officer's signing of the certificate on the SRA alone makes an assessment of the liabilities included in the SRA. Thus, the SRA can be signed on a date other than the Monday assessment date. The date of the assessment is always the date that the assessment officer signs the SRA, irrespective of the fact that the Monday assessment date is shown on the SRA, on the recap or on each tax account.



[REDACTED]

[REDACTED]

(4) The fourth issue concerns whether an emergency shutdown of a service center, which causes a delay in the assessment officer signing the certificate on the SRA, provides a basis for treating the signing as timely made. 2/ We coordinated the issue with Assistant Chief Counsel (Income Tax and Accounting). That office provided their opinion, citing Revenue Ruling 85-67, 1985-1 C.B. 364. A copy of the opinion and ruling are attached. Essentially, they conclude that there is no legal authority by which a shutdown of a service center would permit treating an assessment officer's delayed signing of the certificate on the SRA as having been made timely. We emphasize, however, that the SRA makes a valid assessment but only as of the date of the assessment officer's actual signing of the certificate.

(5) The fifth issue concerns the assessment officer's delay in signing the certificate on the SRA by reason of the occurrence of a legal holiday on the Monday assessment date. 3/ Section 7503, which applies to the making of an assessment by an assessment

2/ Scenario 2 attempts to offer a rationale not based on section 7503. In this regard, the shutdown does not occur on a Saturday, Sunday, or a legal holiday, and thus, in view of our conclusion, above, section 7503 does not apply.

3/ On several occasions Counsel has considered the validity of assessments shown with assessment dates that are legal holidays. The opinions concluded that the assessments are valid. Legality of Assessments Falling on Legal Holidays, G.C.M. 32756 (12-23-63), G.C.M. 34296 (5-28-70).

officer signing the certificate on the SRA, gives the Service an additional business day to act. 4/ Section 7503 provides

When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.

In the circumstances addressed by section 7503, the statute establishes a requirement that the act delayed must be performed by the next succeeding business day. As an element of proof to show that this requirement of section 7503 was complied with, the Service must be able to prove the date that the assessment officer signed the certificate on the SRA. Thus, it is important that the assessment officer write the actual date of signing the certificate in the place provided next to the signature.

In the circumstances addressed by section 7503, the delay that occurs between the Monday assessment date and the next business day on which the assessment officer signs the certificate on the SRA, is not a concern. Thus, if the assessment officer signs the certificate on Tuesday, the next succeeding day after the holiday, the assessment day will be Tuesday but under section 7503, it will be timely.

Section 7503 is limited to acts to be performed on "Saturday, Sunday, or a legal holiday," and includes assessments for which the assessment officer signs the certificate on the SRA on the next business day. The rationale of section 7503 by which a delayed act is treated as timely is inapplicable to circumstances not addressed by section 7503. Thus, for example, if a Monday assessment day fell on a legal holiday but the assessment officer failed to sign the certificate on the SRA until two business days

4/ Treasury Regulation § 301.7503-1(a) provides

Section 7503 applies to ... acts to be performed by ... the director of a regional service center (such as ... assessment ... of any tax).

The director of the regional service center is designated as an official to assess taxes. Treas. Reg. §§ 301.6201-1. The director of the regional service center is required to appoint assessment officers to make assessments by signing summary records of assessments. Treas. Reg. § 301.6203-1. These regulations constitute delegations from the Secretary of the Treasury to assessment officers of authority to make assessments of taxes. Treas. Reg. § 301.7701-9(b).

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later, instead of the next succeeding business day, section 7503 could not be relied on to treat the signing as timely.

This matter is assigned to Bill Brackett. If you should have questions about our advice, contact Bill at 202-622-3881.

Attachments:

Memo. dated 5-1-98 from IT&A:4

cc: Chief, Branch 4 (IT&A), attn: RFrance CC:DOM:IT&A:4
